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To: File
From: Bob Dahl
Subject: Mineral Surveys – Significant Dates with Title and Surveying Processes –
Bona Fide Rights as to Location – Intended for the Federal Authority
Surveyor – Some Ramifications for the Private Sector

Caveat

Performing surveys and resurveys of mining claims and mineral surveys requires the formulation of proper decisions based upon the facts, yet this is often very challenging. Clearly, the facts of each claim, site, survey, and patent are unique and often interdependent. The relevant facts can be a century or more old, and rules, procedures, technology, and values have been changing from the very beginning of mining law. There are exceptions to every rule, and nuances to every situation.

Accordingly, this short essay speaks to the general. It speaks to the information necessary in every case, but not to the application of such information in any given case. The intended audience of this essay is the Federal Authority Surveyor, including the U.S. Deputy Mineral Surveyor. It is believed that the experienced surveyor, equipped with a knowledge of boundary law fundamentals, the congressional purpose of the mining laws, public land laws, and the appropriate questions to ask, will do justice.

Date of Bona Fide Rights

Certain dates are significant to the proper location of Federal lands or Federal interests in lands. By location is meant “on the earth’s surface”, as in the phrase “bona fide rights as to location.” See 43 U.S.C. § 772. These dates also affect the proper location on the earth’s surface of the record title right between two parties, of which the United States may or may not be a party, as in “junior – senior rights.”

Dates that the Federal Authority Surveyor should determine with certainty when conducting a mineral survey, resurvey of a mineral survey, or mineral segregation survey are discussed below, and appear in chronological order.

Location Date is the date the last corner of a location (claim) is marked. To maintain this location date, the claimant must subsequently comply with appropriate federal and state laws and regulations. The claimant must record (file) the claim within the allocated time. The location date is recorded on the location certificate. The location certificate will also include the location (claim) description and a map (diagram) showing the position of the claim on the ground, based upon the location survey and monuments. The location date can determine:

- the date of the possessory right as to title,
- the spatial relationship of the boundaries between the location (claim) and the lands held by the United States, and
- the junior-senior title rights between two parties.

Mineral Survey Filing Date is the date the mineral survey plat, approved with the signature of the BLM State Office Chief Cadastral Surveyor, is officially filed in the BLM Land Office. This is the date bona fide rights as to location vest to the applicant, subject to claim and site validation and mineral examination validation.

(**Note:** The following paragraph summarizes the Departmental procedure applicable from 1866 to 1958 and again subsequent to issuance of Solicitor Opinion M-36990, *Entitlement to a Mineral Patent Under the Mining Law of 1872*, on November 12, 1997.)

Final Certificate Date is also called the mineral entry date, and is the date on the final certificate. On this date complete equitable title vests to the applicant. The title right accrues from the location date. The bona fide right as to location accrues from the filing date of the mineral survey, amended mineral survey, or supplemental plat, which ever is relevant.

(**Note:** The following two paragraphs summarize the Departmental procedure applicable from 1958 until issuance of Solicitor Opinion M-36990, *Entitlement to a Mineral Patent Under the Mining Law of 1872*, on November 12, 1997.)

First Half Final Certificate Date is also called the mineral entry date. This is the date on the first half of the final certificate. On this date complete equitable title vests to the applicant, if the applicant has furnished enough information to enable the Department to verify that all is regular, and upon demonstration and verification of a valid discovery of a valuable mineral deposit and subject to the reservations, exceptions, and restrictions noted. For a claim, the Department will verify a valuable mineral discovery; or, in the case of a millsite, the Department will verify that the land is non-mineral and that the applicant is using, occupying and will need the acreage claimed for mining or milling purposes. The title right accrues from the location date. The bona fide right as to location accrues from the mineral survey filing date.

Second Half Final Certificate Date is the date on the second half of the final certificate. This date is when complete equitable title vests to the applicant. The title right accrues from the location date. The bona fide right as to location accrues from the filing date of the mineral survey, amended mineral survey, or supplemental plat, as relevant.

Patent Date is the date of the signature on the patent, and by definition, the date the patent is issued. This is the date when full fee simple title vests to the applicant. Legal title to the land is transferred on this date. The title right accrues from the location date. The bona fide rights as to location accrue from the filing date of the mineral survey, amended mineral survey, or supplemental plat, as relevant.

These various dates may be affected by a contest, quiet title action, adverse proceeding, mineral survey, amended mineral survey, supplemental plat, conformation of a discovery of a valuable mineral deposit, protest, appeal, fraud or mistake. The dates can also be affected by a new location, relocation, new mineral survey, or other causes.

Bona Fide Rights as to Location

For a patented mineral claim or site, and for each corner and each boundary of an unpatented mineral claim or site, one or a combination of the dates discussed above may affect the proper location of Federal interest lands. With the dates identified, the surveyor will then search for the necessary surveys, official, administrative, and local.

When evaluating each prior survey impacting the area to be surveyed, the surveyor should determine:

- 1) Whether the survey to be conducted is a
 - a) mineral survey,
 - b) resurvey of a mineral survey, or
 - c) a mineral segregation survey.
- 2) If retracing a mineral survey, whether it is a
 - a) patented mineral survey, or
 - b) an unpatented mineral survey.
- 3) If retracing a location (claim) survey, whether the corners and lines are subject to movement in the future. Are the boundaries of the possessory rights as to location subject to float?
- 4) If retracing contiguous mineral surveys, whether they were
 - a) simultaneous (returned on one mineral survey), or
 - b) sequential (returned on separate mineral surveys).
- 5) If retracing contiguous location (claim) surveys, whether they were
 - a) simultaneous, or
 - b) sequential.
- 6) Whether each gap or overlap is
 - a) of record, or
 - b) not of record.

Evidence of Legal Descriptions, and Local Surveys, Maps and Diagrams

The land description within the patent is based upon the mineral survey, but this in turn was not the first survey of the claim or site. Typically there have been multiple activities that could provide physical or descriptive evidence of corner and boundary location of the claim/site, its contiguous claims/sites, and conflicting claims/sites. The patent land description may not be identical with the claim or site description, and the claim/site description may have changed more than once before becoming finalized in the patent. Although not an exhaustive list, some of the intervening surveys, maps, diagrams and descriptions, and where a record of each may be found, are listed in chronological order as follows.

Location Survey (Claim Survey), Location Diagram (Map), and Location (Claim) Description – The mining claim and site description is filed with the location certificate. The location (claim) survey marks the location (claim) and site corners and boundaries. The location diagram (map) is recorded with the location certificate. The location certificate is recorded at the local recording office and in the BLM mining recordation case or patent file.

Contest – A mining claim or site may have been contested. This may be a private contest or a government contest. In either case, the contest is held in front of the

DOI/GLO/BLM, and the result of a contest is an administrative decision. This decision may contain “refreshed” land description(s). If the locus of a claim/site or claims/sites was at issue, a “contest survey” may have been submitted as evidence. The administrative decision and supporting documents will be in the BLM contest case or patent file.

Quiet Title Action – A mining claim or site may have been the subject of a suit to quiet title before a local court of competent jurisdiction. The quiet title action could have resulted in a court decree, court order, settlement with stipulations, etc. As in the case of a contest, the outcome may contain “refreshed” land description(s). If the locus of a claim/site or claims/sites was at issue a “quiet title action survey” may have been submitted as evidence. The judgment roll and supporting documents should be filed at the local courthouse and in the BLM mining claim recordation case or patent file.

Adverse Proceedings – A mining claim or site may have been subject to an adverse claim. The adverse claim is filed with the GLO/BLM and followed by a suit filed in a local court of competent jurisdiction. The adverse suit could have resulted in a court decree, court order, settlement with stipulations, etc. Here again, the outcome may contain “refreshed” land description(s). There will almost certainly be an adverse survey(s). The judgment roll and supporting documents should be filed at the local courthouse and in the BLM patent file.

Mineral Examination and Mineral Report – The DOI mineral examiner will visit the claim and site and write a mineral report, focused on mineral classification. If any 10-acre legal subdivision or tract of a placer is determined to be non-mineral in character, it could be removed from the mining claim. If any 2½ acre legal subdivision or tract of a millsite is determined to be mineral in character, or not used, occupied, or needed for mining or milling, it could be removed from the site. The mineral examiner’s report is in the BLM case or patent file.

Protest or Appeal – A claim may have been part of a protest to the DOI/GLO/BLM. The documents used in adjudicating the protest will be in the BLM case or patent file. A decision on the protest may have been appealed to the DOI/OHA/IBLA. There will be records of briefs, statements of reasons, replies, orders, decisions, etc. The case file will be retained by the GLO or BLM, and/or OHA/IBLA after conclusion of the proceedings.

Title Rights

The mining laws of the United States create three distinct classes of titles, viz.:

- 1) Title by possession.
- 2) Complete equitable title..
- 3) Title in fee simple.

The third vests in the grantee of the government an indefeasible title, while the first vests a title in the nature of an easement only. The third being an absolute grant by purchase and patent without condition, is not defeasible, while the first being a mere right of possession and enjoyment of profits without purchase, and upon condition, may be defeated at any time, by the failure of the party in possession to comply with the

condition, viz.: to perform the labor or make the annual improvement required by the statute.

The complete equitable title vests immediately upon purchase, evidenced by the patent certificate. From 1958 to 1997 this is the date on the first half of the final certificate, subject to mineral examination validation. From 1866 to 1958 and again from 1997 to the present, this is the date on the final certificate. The right to a patent once vested is equivalent to a patent issued.

A title by right of possession is the lowest grade of title known to the mining laws (and to the public land laws, i.e., preemption, homestead entry); the next is the equitable title which accrues upon purchase and mineral entry, while the final grade is the fee simple, which is acquired by patent, evidencing the legal title and merging therein both the possessory and equitable titles.

The possessory right provided for may continue for an indefinite term of years, and can only be terminated by a failure of the claimant to comply with the terms of the statute, and an assertion of claim to the land by another; but there is nothing in the law which requires a party in possession to purchase the land from the government, and if the party complies with the law relating to possessory rights, title, for all practical purposes, is as good as though it were secured by patent.

The discussion above has spoken to title rights to both the surface estate and the subsurface estate, including the extralateral estate. But it can easily be inferred that similar rationale applies to the bona fide rights (whether in the class of possessory, equitable or fee) as to location on the earth's surface and beneath the earth's surface. It has been said as to location, that once the statutory requirements have been met, the claimant "shall have the exclusive right of possession and enjoyment of all the surface included *within the lines* of their locations although the United States retains title to the land." *California Coastal Commission v. Granite Rock Co.*, 480 U.S. 572, 575 (1987) emphasis added. The surveyor must be able to recognize when bona fide rights as to location of the surface estate is not identical with the bona fide rights as to location of the subsurface estate, including the extralateral estate.

Therefore, in very general terms, and by today's rules and regulations, the condition of the bona fide rights as to location on and beneath the earth's surface for each class of title are as follows:

Possessory right - As to title, vests on the location date. Regarding bona fide rights as to location, the location is floating on the location date, i.e., the position of the location corners can be moved during the mineral survey, but only inward; or, a portion of placer claim is determined to be non-mineral; or, a portion of a millsite is determined mineral or not necessary.

Equitable title – As to title, during the period from 1958 to 1997, vests on the date the first half of the final certificate is signed, and accrues from the location date. This right is subject to mineral examination validation. During the period from 1866 to 1958, and again from 1997 to the present, vests on the date the final certificate is signed, and accrues from the location date. Bona fide rights as to location become fixed on the filing

date of the mineral survey, amended mineral survey or supplemental plat, subject to adverse proceedings and mineral examination validation. One survey plat may cover a portion of the description, with another plat with a different filing date covering the remainder of the description.

Fee simple title – As to title, during the period from 1958 to 1997, vests on the date the second half of the final certificate is signed, and accrues from the location date. From 1866 to 1958, and again from 1997 to the present, vests on the date the final certificate is signed, and accrues from the location date. The signed final certificate is subject to protest and appeal until the date of the patent. The finality of the patent issuance is excepted in cases of fraud or mistake, which are subject to statute of limitations. Bona fide rights as to location become fixed on the filing date of the mineral survey, and/or on the filing date of any amended mineral survey or supplemental plat. One survey plat may cover a portion of a patent description, with another plat with a different filing date covering the remainder of the patent description.